IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1133 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL CORP. - Petitioner(s)

Versus

AHMEDABDA MUICIPAL KAMDAR UNION - Respondent(s)

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Appearance :
MR MR ANAND for Petitioner(s) : 1,MR DIPAK C RAVAL for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 06/12/2005

ORAL JUDGMENT

1. The petitioner, Ahmedabad Municipal Corporation, has filed this petition under Articles -226 and 227 of the Constitution of India, challenging the award passed by the Industrial Tribunal in Ref. (IT) No.165 of 1986 on 14.6.1993.

2. It is the case of the petitioner – Corporation that the respondent Union raised an industrial dispute claiming motorcycle allowance to four Electricians working in pumping station. The Industrial Tribunal vide its award dated 14.6.1993 awarded motorcycle allowance and directed that the Electricians working in Drainage Pumping Station be paid motorcycle allowance. The said award is challenged by the petitioner – Corporation in the present petition on the ground that the Industrial Tribunal has awarded motorcycle

allowance to the Electricians while other similarly situated employees were not getting the said allowance. It is contended that the motorcycle allowance is paid to those employees who are required to travel 25 to 30 Kms., every day, like Sanitary Inspector, Electricians working in Street Light Department, Estate & Tax Department etc., and not like the Electricians working in Drainage Pumping Station. Mr.Dipak C. Raval, learned advocate appearing for the petitioner has submitted that the Electricians have to work within the premises of the pumping station and they were never required to go out like the Electricians who were working with the street light, who are required to travel every day for 25 to 30 Kms. He has further submitted that a categorical finding was given in the award passed in Ref. (IT) No.439 of 1978 by the Industrial Tribunal, that the Electricians of the Light & Power

Station, who were working in the streets were given the motorcycle allowance with effect from 23.2.1980. There was not a single award which shows that the motorcycle allowance is to be paid to an employee who is working only within the department and who is not required to travel 25 to 30 Kms., on daily basis. Mr.Raval further submitted that the basic condition for awarding the motorcycle allowance as per the number of awards of the Industrial Tribunal, is that an employee must have an outdoor duty with daily traveling of about 25 to 30 Kms. This basic condition is not satisfied in the present case. He has further submitted that Shri S.R.Shah specifically stated in his deposition that these four employees did not have any outdoor duty and no motorcycle allowance could be paid to them. It is further submitted that if any material was to be brought for Pumping Station, vehicle was proved for that purpose

and there was no question of any Electricians going anywhere on his vehicle for bringing the materials. It is further submitted that under the Corporation policy an employee must have his own vehicle in his own name with his own license and the motorcycle should be used officially for outdoor duty then only the motorcycle allowance is paid. In the present case not only the Electricians did not have any outdoor duty but there was nothing to show that they had their own motorcycles. That no employee has stated before the Corporation authority that they have outdoor duty so they have acquired motorcycle and so they should be paid the motorcycle allowance.

3. Mr.Raval further submitted that an identical petition by the petitioner being Special Civil Application No.5184 of 1994 challenging the award of the Industrial Tribunal giving the

motorcycle allowance to an employee who did not have outdoor duty requiring daily traveling of 25 to 30 Kms., was decided by this Court on 16.10.2002 and this Court has observed that there was no need to comply with the award made by the Tribunal in favour of the respondent. The Court has further observed that in view of the subsequent development and termination of services of the employee, the award made by the Tribunal for granting motorcycle allowance with effect from 16.9.1993 was not required to be implemented by the Corporation. The Court has further observed that the respondent was not working in the Corporation and, therefore, there was no need to comply with the award made by the Tribunal in favour of the respondent. In the present case the Industrial Tribunal has awarded motorcycle allowance to four employees with effect from 1.7.1988. The award was passed on 14.6.1993 and the same was challenged

before this Court and this Court has admitted the petition and interim relief was granted in terms of operation of the said award. The matter was ordered to be heard with Special Civil Application No.5184 of 1994.

4. Despite the service of rule nobody appeared on behalf of the respondent. Special Civil Application No.5184 of 1994 was disposed of by this Court and it was observed that the award passed by the Industrial Tribunal was not required to call for as the respondent workman was dismissed from service. Here, in the present case the facts are slightly different. The Industrial Tribunal has awarded motorcycle allowance with effect from 1.7.1988. However, the petitioner Corporation's main contention was not taken into consideration by the Industrial Tribunal that the concerned employees in respect of whom award was passed

were not having any outdoor duty and they were not falling within the ambit of policy of framed by the Corporation for granting motorcycle allowance. It has been stated that if any employee who is sent outside, vehicle of the Corporation is provided and he is also paid over time charges. The award passed by the Industrial Tribunal in Ref. (IT) No.493 of 1978 on 23.2.1980 is clearly distinguishable on facts and in that case, the concerned employees were having outside office duty and they have to travel 25 to 30 Kms., in a day and in that view of the matter, the Tribunal has awarded motorcycle allowance. So far as present case is concerned, the employees have not to travel outside during the course of their duty and hence motorcycle allowance is not payable to them.

5. Considering the facts and circumstances of

the case and considering the nature of the duty which have been performed by the concerned employee, the Court is of the view that the Industrial Tribunal has committed an error in awarding motorcycle allowance to the concerned employees. The award is, therefore, quashed and set aside. The petition is accordingly allowed. Rule is made absolute without any order as to costs.

(K. A. PUJ, J.)

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